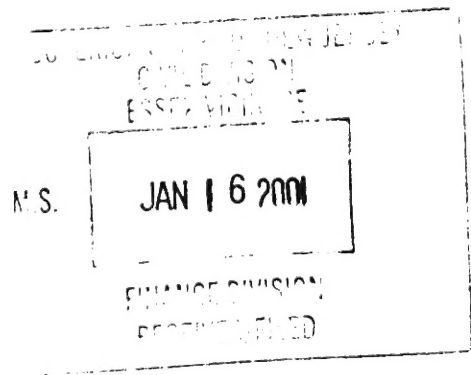


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CITY OF NEWARK  
MAYOR SHARPE JAMES and NEWARK  
CITY COUNCIL,

Plaintiffs,

vs.

DAVID HESPE, COMMISSIONER OF  
EDUCATION, CHARLENE M. HOLZBAUR,  
NEW JERSEY DIRECTOR OF BUDGET AND  
ACCOUNTING, ROLAND M. MACHOLD,  
NEW JERSEY STATE TREASURER, NEW  
JERSEY STATE BOARD OF EDUCATION,  
STATE OPERATED NEWARK SCHOOL  
DISTRICT, MARION BOLDEN, STATE  
OPERATED NEWARK SCHOOL DISTRICT  
SUPERINTENDENT, BEVERLY HALL,  
FORMER STATE DISTRICT SUPER-  
INTENDENT, BETSY DEMATTEO, STATE  
OPERATED NEWARK SCHOOL DISTRICT  
BUSINESS ADMINISTRATOR AND JOHN  
DOES 1-1000 (names being fictitious),

Defendants.

SUPERIOR COURT OF NEW  
JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO.

ACTION IN LIEU OF  
PREROGATIVE WRIT

Complaint

Plaintiffs, Newark Mayor Sharpe James and Newark City Council, complaining of  
Defendants, allege by this Complaint in Action in Lieu of Prerogative Writ, as follows:

### **BACKGROUND**

1. This is an action to compel the Defendants to comply with their duties to  
account for school funding provided for the State Operated Newark School District and

particularly to account for approximately seventy-four million (\$74,000,000.00) dollars for which there is a shortfall, due to the actions and/or inactions on the part of Defendants to manage properly the monies entrusted to them.

2. The City of Newark is designated as an Abbott District, pursuant to N.J.A.C. 6:19A-1.2, which designates school districts for which the remedies discussed in the Abbott v. Burke litigation apply.

3. Additionally, in 1995 the State removed the Newark Board of Education and created a State-operated school district. See N.J.S.A. 18A:7A-15 and 18A:7A-34.

4. Despite the creation of a State-operated school district for Newark, continuing to the present, the City of Newark contributes by way of tax contributions eighty million (\$80,000,000.00) dollars annually to the budget for the Newark school district.

5. Pursuant to statutory and constitutional obligations, the State of New Jersey is obligated to provide additional, supplemental funding to the Newark school district.

6. Pursuant to statutory obligation, N.J.S.A. 18A:7A-35, upon the creation of a State-operated school district, the schools of that district are to be conducted by and under the supervision of a State district superintendent of schools appointed by the State Board of Education upon recommendation of the Commissioner of Education.

7. The State district superintendent is obligated to perform the duties required to operate the State-operated school district.

8. State-operated school districts are, pursuant to N.J.S.A. 18A:39(d), subject to the statutory requirements governing the expenditure of funds, N.J.S.A. 18A:19-1 et seq., except that the State district superintendent is required to authorize all warrants for claims or expenditures approveable by a district board of education or any action required of a district board of education pursuant to Chapter 19 of Title 18A (relating to the expenditure of funds, auditing and payment of claims).

9. Moreover, pursuant to N.J.S.A. 18A:7A-41, an internal audit team must be

established within a State-operated school district, to monitor the business functions of the district and to report its findings to the State district superintendent and to the Commissioner of Education.

10. Only claims or demands against a school district which are authorized by law, itemized and verified and duly audited as required by law may be paid. N.J.S.A. 18A:19-2.

11. This suit seeks to compel actions by the Defendants to comply immediately with their statutory obligations to account for school monies entrusted to them.

**THE BUDGET SHORTFALL AND FINANCIAL  
MISMANAGEMENT OF THE STATE  
OPERATED NEWARK SCHOOL DISTRICT**

12. The 2000-01 school year is under way, and Defendants should be obligated to comply with their obligations, particularly respecting the financial management and oversight of the State Operated Newark School District.

13. Upon information and belief, the State Operated Newark School District is currently facing a budget shortfall of approximately seventy-four million (\$74,000,000.00) dollars which cause has not been determined by the Defendants.

14. State-appointed auditors are apparently reviewing the financial records of the State Operated Newark School District but, upon information and belief, the Commissioner of Education has indicated that it may take at least a year to complete the audits and reports, and to stabilize financial procedures.

15. The Newark tax dollars contributed annually to the State Operated Newark School District should be accounted for and expended only in accordance with law.

16. Insofar as any monies have been misspent or misappropriated, those entrusted with such funds should be called to account and should be obligated to replace any funds expended not in accordance with law, and this action seeks such relief.

17. To accomplish the foregoing, this suit seeks an Order requiring that an amount equal to the presently existing budget shortfall, in addition to any other funding and budgetary

requirements, should be set aside, authorized and designated for use by the State Operated Newark School District in accordance with law.

18. Plaintiff seeks a complete accounting relating to all finances relating to the State operated Newark School District including any audits and additional records related to expenditures by the State Operated Newark School District.

### THE PARTIES

19. Plaintiff, City of Newark in a municipality of the State of New Jersey, located in the County of Essex.

20. Plaintiff Mayor Sharpe James is the Mayor of the City of Newark and, together with the Newark City Council, constitutes the governing body of the City of Newark.

21. Plaintiff Newark City Council is the Council of the City of Newark which, together with the Mayor, constitutes the governing body of the City of Newark, and which approves legislation, including that relating to the funding of Newark schools.

22. Defendant David Hespe is the Commissioner of Education of the State of New Jersey and is charged, pursuant to N.J.S.A. 18A:4-22 et seq., with the responsibility to take lawful actions to implement plans and programs for school districts throughout the State of New Jersey, and to recommend the appointment of a district superintendent of State-operated school districts, including the State Operated Newark School District. See N.J.S.A. 18A:7A-15.1.

23. Defendant Charlene M. Holzbaur is the New Jersey Director of Budget and Accounting and is charged, pursuant to N.J.S.A. 52:18A-5 et seq., with the responsibility of budget and compensation involving State employees, including payments made from State funds through the Commissioner of Education.

24. Defendant Roland M. Machold is the New Jersey State Treasurer, the administrator and head of the Department of the Treasury. See N.J.S.A. 52:18A-2 et seq.

25. Defendant New Jersey State Board of Education is the State Agency charged with the general supervision and control of public education, N.J.S.A. 18A:4-10, to ensure a thorough

and efficient education for all children of the State of New Jersey, and has the statutory responsibility, pursuant to N.J.S.A. 18A:7A-15.1, to appoint State operated school district superintendents, including the superintendent for the State Operated Newark School District.

26. Defendant State Operated Newark School District is the state operated school district established by the New Jersey State Board of Education in 1995.

27. Defendant Marion Bolden is the State Operated Newark School District Superintendent who is obligated, pursuant to N.J.S.A. 18A:7A-35 et seq., to perform the duties required to operate the State Operated Newark School District, including the duties required for the lawful expenditure of funds.

28. Defendant Beverly Hall is the former State Operated Newark School District Superintendent who is obligated, pursuant to N.J.S.A. 18A:7A-35 et seq., to perform the duties required to operate the State Operated Newark School District, including the duties required for the lawful expenditure of funds.

29. Defendants John Does 1-1000, names being fictitious, are individuals, entities, agencies, employees, legislative bodies and/or others who have any responsibility or obligation respecting the funding and monies for the State Operated Newark School District, or who are necessary and/or proper parties to any Order to effectuate any of the relief requested herein or which may be ordered by the Court.

#### COUNT ONE

#### **VIOLATIONS OF STATUTORY OBLIGATIONS GIVING RISE TO RELIEF IN LIEU OF PREROGATIVE WRIT**

1. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs one (1) through twenty-nine (29) above as if set forth herein in full.

2. It is in the public interest that taxpayer funds and other public monies be accounted for in accordance with law.

3. Plaintiffs have paid over annually, for the support of the Newark Schools, funds in the amount of eighty million (\$80,000,000.00) dollars.

4. Since 1995 and continuing through the present time, Defendants have accepted these funds.
5. Since 1995 and continuing through the present time, Defendants have accepted other funding.
6. These funds are to be held in trust for the benefit of the Newark Schools to be expended only in accordance with law.
7. These funds that have been accepted are under the control of Defendant State Operated School District, Defendant Marion Bolden, as the District Superintendent, and other Defendants.
8. The funds entrusted to the Defendants, including Newark tax funds, have been expended and are unaccounted for, in violation of law.
9. There exists presently a budget shortfall for the State Operated Newark School District in the approximate amount of seventy-four million (\$74,000,000.00), which is *prima facie* proof that the funds have been expended and/or unaccounted for unlawfully.
10. Audits, as required to be performed by Defendants, have not been completed.
11. As a result of the foregoing, Defendants have acted and/or failed to act contrary to their statutory obligations, to the detriment of the public and Plaintiffs.
12. Without immediate relief from this Court, the public and Plaintiffs shall continue to be harmed.

W H E R E F O R E Plaintiffs demand that the Court order the following relief:

1. That Defendants immediately disclose to Plaintiffs the full contents of all audits and/or reports, and drafts thereof, relating to the finances of the State Operated Newark School District;
2. That Defendants immediately identify to Plaintiffs the exact amount of the budget shortfall for the State Operated Newark School District;
3. That Defendants immediately take all necessary actions to replace funds for the

State Operated Newark School District, from funds of the State of New Jersey, in an amount equal to the presently existing budget shortfall, which amount shall be in addition to any other required funding;

4. That Defendants, as soon as practicable, provide final audits and/or reports, relating to the finances of the State Operated Newark School District at the cost of the Defendants;

5. That Defendants pay to Plaintiffs reasonable attorney's fees;

6. That Defendants reimburse to Plaintiffs their costs of suit; and

7. Such other and further relief as the Court deems just and proper.

## COUNT TWO

### ACCOUNTING

1. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs one (1) through twenty-nine (29) and in Count One above as if set forth herein in full.

2. Defendants have statutory obligations to account for the school monies entrusted to them relating to the State Operated Newark School District.

3. Defendants have failed to account for school monies entrusted to them, including amounts of approximately seventy-four million (\$74,000,000.00) dollars.

WHEREFORE Plaintiffs demand that the Court order the following relief:

1. That Defendants immediately disclose to Plaintiffs the full contents of all audits and/or reports, and drafts thereof, relating to the finances of the State Operated Newark School District;

2. That Defendants immediately identify to Plaintiffs the exact amount of the budget shortfall for the State Operated Newark School District;

3. That Defendants immediately take all necessary actions to replace funds for the State Operated Newark School District, from funds of the State of New Jersey, in an amount equal to the presently existing budget shortfall, which amount shall be in addition to any other

required funding;

4. That Defendants, as soon as practicable, provide final audits and/or reports, relating to the finances of the State Operated Newark School District at the cost of the Defendants;
5. That Defendants pay to Plaintiffs reasonable attorney's fees;
6. That Defendants reimburse to Plaintiffs their costs of suit; and
7. Such other and further relief as the Court deems just and proper.

### **COUNT THREE**

#### **RIGHT TO KNOW LAW**

1. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs one (1) through twenty-nine (29) and in Counts One and Two above as if set forth herein in full.
2. Defendants have, upon information and belief, conducted financial audits of the expenditures by the State Operated Newark School District and have additional financial records relating to the State Operated Newark School District.
3. Plaintiffs have not been provided access to these records.
4. Plaintiffs are entitled to access to these records pursuant to the New Jersey Right to Know Law, N.J.S.A. 47:1A-2 et seq. and pursuant to common law.

WHEREFORE Plaintiffs demand that the Court order the following relief:

1. That Defendants immediately disclose to Plaintiffs all records concerning any financial audit of the State Operated Newark School District;
2. That Defendants immediately disclose to Plaintiffs all records of financial expenditures by the State Operated Newark School District;
3. That Defendants immediately, as soon as practicable, provide final audits and/or reports, relating to the finances of the State Operated Newark School District;
4. That Defendants pay to Plaintiffs their reasonable attorneys' fees;
5. That Defendants pay to Plaintiffs their costs of suit; and

6. Such other and further relief as the Court deems just and proper.

**COUNT FOUR**

**BREACH OF CONTRACT**

1. Plaintiffs repeat and reallege each and every allegation as contained in paragraphs one (1) through twenty-nine (29) and in Counts One, Two and Three above as if set forth herein in full.

2. Defendants are parties to express and/or implied contracts or agreements with the City of Newark relating to the accounting of expenditures of education funds for the schools of the State Operated Newark School District.

3. The students of the State Operated Newark School District are third-party beneficiaries to these contracts or agreements.

4. Defendants have breached their obligations under these contracts or agreements.

5. The Plaintiffs and third-party beneficiaries have thereby been damaged and continue to be damaged as a result of these breaches.

6. All conditions precedent to this action are met.

WHEREFORE Plaintiffs demand that the Court order the following relief:

1. That Defendants pay damages in an amount to be determined at a trial of this matter;
2. That Defendants pay to Plaintiffs reasonable attorneys' fees;
3. That Defendants reimburse to Plaintiffs their costs of suit; and
4. Such other and further relief as the Court deems just and proper.

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(973) 622-1846  
Attorneys for Plaintiff  
Mayor Sharpe James

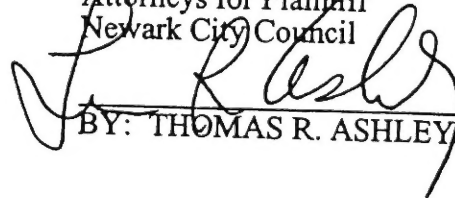
  
BY: RAYMOND A. BROWN, ESQUIRE

DATED:

Ashley & Charles  
50 Park Place, Suite 1400  
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(973) 623-0501

Attorneys for Plaintiff  
Newark City Council

DATED:

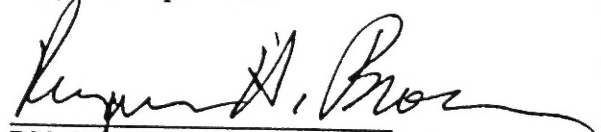
  
BY: THOMAS R. ASHLEY, ESQUIRE

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues triable by a jury.

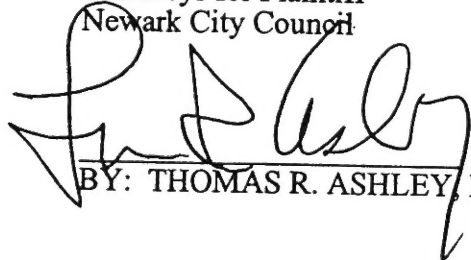
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Mayor Sharpe James

DATED:

  
BY: RAYMOND A. BROWN, ESQUIRE

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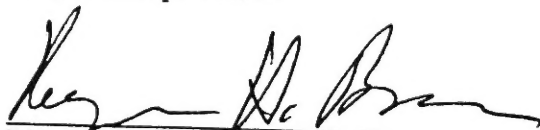
DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Raymond A. Brown is designated as Trial Counsel for Plaintiff, Mayor Sharpe James, and Thomas R. Ashley is designated as Trial Counsel for Plaintiff, Newark City Council.

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(973) 622-1846  
Attorneys for Plaintiff  
Mayor Sharpe James

DATED:

1/12/01

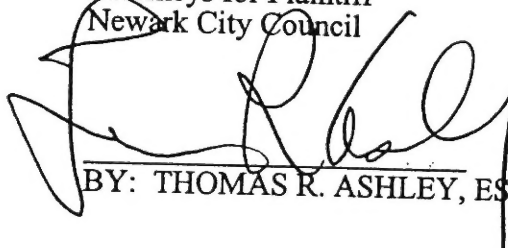


BY: RAYMOND A. BROWN, ESQUIRE

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Attorneys for Plaintiff  
Newark City Council

DATED:

1/12/01



BY: THOMAS R. ASHLEY, ESQUIRE

**CERTIFICATION PURSUANT TO R.4:5-1**

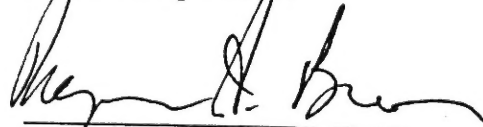
I hereby certify that, pursuant to R.4:4-1: (1) the within matter in controversy is not the subject of any other action pending in any other court or arbitration; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in the subject matter is presently known.

I hereby certify that the foregoing pleading has been served within the time provided by the Rules of Court.

DATED:

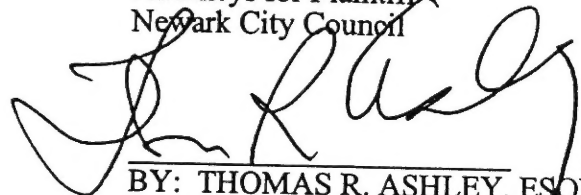
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BY: THOMAS R. ASHLEY, ESQUIRE

DATED:

1/12/01